

Application No.: 10/807,068
Docket No.: HT3895USNA

Page 5

REMARKS

Reconsideration is respectfully requested of the rejection of claims 1 to 16, all claims presently under prosecution, under the provisions of 35 USC 103(a). Non-elected claims 17 to 25, subject to a restriction requirement, have been cancelled with a right to file a divisional patent application.

Application No.: 10/807,068
Docket No.: HT3895USNA

Page 6

CLAIM AMENDMENTS

In the present amendment, independent claim 1 and dependent claim 13 have been amended to recite modacrylic fiber being present in the resilient layer. Previously, the wording of the claims did not require the presence of this fiber.

Application No.: 10/807,068
Docket No.: HT3895USNA

Page 7

REJECTIONS UNDER 35 USC 103(a)

Claims 1 to 4 and 6 to 16 stand rejected under 35 USC 103(a) based on Kent et al. (Kent) USP 6,489,256 in view of Ichibori et al. (Ichibori) USP 5,506,042. Initially, the Office rejection sets forth the disclosure of Kent with the deficiency of this publication in the wording:

"Kent fails to disclose a (sic) cellulose and polyester fibers".

To cure the lack of disclosure of Kent, the Office position turns to Ichibori. The following summary is stated in the combination of publications:

It would have been obvious for one having ordinary skills in the art at the time of the invention to employ a blend of cellulose and polyester fibers as taught by Ichibori in order to improve the visual attractiveness, feeling, hygoscopic property, washing resistance and durability of the batting of Kent.

For the limitations of the amounts of specific fibers in the base and resilient layers, the Office position is:

It is considered an obvious modification to alter select ranges of various fibers and materials and it would have been obvious for one having ordinary skill in the art at the time of the invention to employ the ranges as stated above in order to provide a composite fabric blend having fire blocking characteristics, superior strength, and end-user comfort.

The Office position and statements are respectfully traversed. Initially, it is pointed out that the two layer high loft batting of the present invention is designed and has specific use in a mattress construction in accordance with page 3, line 22 of the present patent application under "Summary of The Invention".

In contrast, the flame and fire resistant fabric of Kent is not designed to be used in a mattress construction with attention directed to column 2, lines 54 to 60 as follows:

These compositions can be used in blankets (referred to herein as "fire escape blankets"), wall

Application No.: 10/807,068
Docket No.: HT3895USNA

Page 8

liner materials (for example, wall paper or wall curtains) in nursing homes and other buildings, thermal liner products, welding curtains used in industrial applications and other applications where fire and/or high temperatures are to be blocked.

It is true that Kent does disclose a second layer opposite the limitations of all claims under prosecution of specific concentrations of modacrylic and polyester fibers with a binder material. However, Kent with a different end use, discloses the following for an additional layer or column 2, lines 42 to 50 as follows:

At least one additional layer may be attached to the fabric. For example, the additional layer attached to the fabric may comprise one or more woven fabric layers, non-woven fabric layers knitted fabric layers, films and combinations thereof. For example, the additional layer may be a fiberglass fabric attached to a layer of needle-punched non-woven fire and flame resistant fabric comprised of a blend of melamine resin fibers, aramid fibers and modacrylic fibers.

Thus, it is noted that Kent employs fiberglass as an example of a material in an additional layer attached to a blend of melamine, aramid and modacrylic fibers.

Thus, in summary opposite Kent, this publication is deficient in the fibers in the base layer and the fibers of the resilient layer. The Office statement quoted above is an incomplete portrayal of the disclosure and teachings of Kent.

Again, the Office statement is:

"Kent fails to disclose a (sis) cellulose and polyester fibers."

To cure the deficiencies of Kent, the above position lies on Ichibori. A reading of this publication leads to a conclusion of lack of applicability with Kent. Illustratively, the following disclosure is present of the invention of Ichibori and column 2, lines 4 to 11.

In accordance with the present invention, there is provided (sis) a flame-retarded composite fiber comprising (A) 85 to 15 parts by weight of a fiber comprising a polymer containing 17 to 86% by weight of a halogen, and 6 to 50% by weight of an Sb compound based on the polymer, and (B) 15 to 85 parts by weight of at least one fiber selected from the group consisting of natural fibers and

Application No.: 10/807,068
Docket No.: HT3895USNA

Page 9

chemical fibers, the total amount of the fibers (A) and (B) being 100 parts by weight.

The relevance of this disclosure in combination with Kent is not understood.

Clarification of the Office position is requested.

In summary, all claims under prosecution require a base layer and a resilient layer in a high loft flame resistant batting particularly useful in mattress construction. The publications relied upon in the Office rejection fail to provide the necessary fibers in a two-layer construction. Accordingly, with lack of the fibers, the amounts cannot be optimized to meet the amounts required in the present claims.

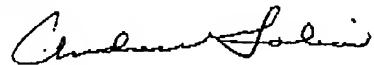
Claim 5 stands rejected on Kent and Ichibori, previously discussed, in view of Horrocks et al. (Horrocks) USP 5,645,925. The additional publication is cited as follows:

It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a viscose fiber containing silicic acid as taught by Horrocks in order to provide an inorganic reinforcement to the char-bonded structure during charring.

This claim represents a patentable advance in the art for reasons discussed above. The additional teaching of Horrocks does not cure the deficiency in the combination of Kent and Ichibori.

In summary, the deficiency of the prior art rejections has been set forth.
Reconsideration and removal of the Office position is requested. A notice of allowance is solicited.

Respectfully submitted,



ANDREW G. GOLIAN
ATTORNEY FOR APPLICANTS
Registration No.: 25,293
Telephone: (302) 892-0747
Facsimile: (302) 892-7343

Dated: December 7, 2005